



January 6, 2005

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th St., SW
Suite TW-A325
Washington, D.C. 20554

Re: WC Docket No. 04-416

This is a response to the Matter of the Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. 5 160(c) Pertaining to Qwest's xDSL Services.

"Promoting the rapid deployment of broadband services is a cornerstone of federal communications policy."

Qwest petitions for forbearance on xDSL. Let us call it what it is though – Qwest is asking for unregulation of xDSL transport facilities. Qwest Corp. sells transport. Transport is regulated and tariffed – as it should be for a utility and natural monopoly.

xDSL is not used solely for internet traffic. It has become the inexpensive replacement telecommunication service.

1. Independent ISPs bridge medical offices together with xDSL, replacing Private Lines.
2. xDSL is used as a PBX extension technology, replacing tie lines and private lines.
3. Telecommuters access main frame and database computer applications while working from home, replacing dial-up and remote access circuits.
4. xDSL is used for video conferencing, replacing ISDN.
5. VPN offerings are available over xDSL, replacing dial-up, ISDN, and DS1 circuits.

Qwest is asking the FCC to stop overseeing its telecommunications service offerings used primarily for broadband internet access. Qwest is asking for an OSI Layer 1 physical facility to be unregulated and removed from the tariff. This is a common carriage element no different than a phone line. For indiscriminate access, it must remain regulated.

xDSL technology is a telecommunications element. It HAS other uses besides Internet Access. The transport element has to be separate and regulated.

Cable is ahead

This statement bears examination.

First, the technology of ADSL has an imposed limit of 18,000 feet from the DSLAM. ADSL must be on a "conditioned" copper pair; one without load coils, DLCs or DMALs, which are common occurrences in many areas. DSLAMs and mini or remote DSLAMs were needed to be deployed in Slicks or Remote terminals to get closer to the consumers, within the 18000 feet boundary. While ADSL technology, namely ADSL2 and ADSL+, is improving, these limitations have left wireline DSL behind in its ability to reach consumers.

I would like to point out that the BOCs had xDSL technology for a long time before it was deployed. It was Northpoint, Rhythms, and Covad (the DLECs) that first deployed SDSL to

January 6, 2005

Page 2

small businesses, waking up the sleeping giant by attacking its highly profitable \$1200 T1 business.

History will tell you that the BOCs not only started rolling out ADSL later than cable modem, but continually used its ADSL roll-out as a political bargaining chip. Since 1999, the BOCs have promised again and again to deploy both xDSL and FTTH for state and federal backing. These politics are what has hurt our broadband deployment, not whether or not BOCs have to share the network.

Deployment

"Naked DSL" as such was not "innovated" by Qwest. DSL have been "naked" (or without voice services) in forms such as VDSL, SDSL, and HDSL for years. The BOCs were supposed to roll out "Naked ADSL" in response to various state PSC requests that wanted ADSL available to consumers who did not subscribe to BOC voice services.

The states and especially the municipalities clearly understand that ILECs do not care to bridge the digital divide. Cable companies neither, as "Mecklenburg County officials moved Tuesday to end Time Warner Cable's contract to serve unincorporated areas, saying the company has failed to provide a promised network for government buildings" for 8 years! (from the Charlotte Observer at <http://www.charlotte.com/mld/charlotte/news/10419349.htm?1c>).

The municipalities clearly understand that when competing for jobs, economic growth, and education, the digital divide is a deciding factor. This is demonstrated by the cover of Broadband Properties magazine (December 2004): "200+ Fiber Communities In the US – growing at a breakneck pace". Why would 200 communities be building their own network? Failure on the part of the duopoly to stop politicizing broadband.

Let us point out that had Verizon rolled out broadband as promised in 4Q04, Philadelphia would not be in a battle with Verizon over a proposed wireless project for the city. It is obvious that it CAN be done, but the duopoly needs to be mandated or pushed to do it. Both cable and ILEC have already been paid to deploy it.

The BOCs actions have spoken very loud: the only digital landscape it sees is one it owns and operates exclusively. This is detrimental to this country's economy. And who will pay for it? The consumer will pay, as always.

The BOCs would prefer to litigate to death all competition. Meanwhile, according to MSNBC (<http://www.msnbc.msn.com/id/5954229/>), the USA is 10th in the world in broadband. Will we continue to let the BOCs keep us in the digital dark?

It has been the delayed deployment as well as the technological limitations of ADSL that have resulted in wireline ADSL amassing a smaller market share than cable modems. No provisions of the TA96 have stymied these efforts.

Fines

From <http://www.reclaimthemedias.org/stories.php?story=04/06/24/5762688>:
"Denver-based Qwest has shelled out \$17.1 million in fines and settlement payments resulting from Federal Communications Commission actions since January 2000 - the highest amount paid by any company the agency regulates.

A new study by the Center for Public Integrity, a Washington, D.C.-based think tank that investigates public policy issues, says Qwest is among four regional Bell operating companies that account for roughly two-thirds of all FCC fines and settlements paid in that period.

January 6, 2005

Page 3

A total of \$64.6 million has been paid by companies regulated by the FCC to settle disciplinary actions, with \$42.8 million paid by the four Bell operating companies.

Verizon Communications followed Qwest with \$12 million, SBC Communications Inc. paid \$11.5 million and BellSouth Corp. paid \$2.15 million."

Will the reward for all of this behavior be forbearance?

Time delay

Qwest makes reference to requirements that added "60 to 75 days" as well as delays and 15-day notices.

These delays are nothing compared to the years of political rangling and feet dragging to move this country forward in the fight for an even playing field on the new globalized economy.

Qwest argues that forbearance will benefit the public without justifying it. But really forbearance only benefits Qwest and her BOC siblings.

The ILECs (BOCs included) are a utility and own a natural monopoly. Utilities need to be regulated for the public good. From FCC-02-42A1, "The Communications Act of 1934, as amended ("the Act") gave the Commission extensive authority over all "common carriers," which the Act defined to include all persons "engaged as a common carrier for hire, in interstate and foreign communication." Title II of the Act requires, inter alia, "that common carriers provide service at just and reasonable prices, and subject to just and reasonable practices, classifications and regulations; that they make no unjust or unreasonable discrimination; that they file tariffs, subject to Commission scrutiny; and that they obtain Commission approval before acquiring or constructing new lines."

It is being asked that the Commission continue to regulate broadband telecommunication services (xDSL) for the public good.

Qwest offers xDSL without the internet component; thus, they are selling just telecom services. This is a fair way to offer broadband transport services. But this also points out that xDSL is a Layer 1 element and as such is subject to common carriage.

What would be the recourse for filing complaints against Qwest for problems associated with xDSL ? Consumers can't go to the state and now the consumers will not be able to go to the FCC. Civil litigation would be the only means of redress.

"Under the terms of the decree, the operating companies will provide exchange and local access service and may provide printed directory advertising and new customer premises equipment." That was 1982. Today, the BOCs have been given permission to provide both enhanced services (including information services) and long distance. Surely, those huge carrots are worth "the trouble" of tariffing.

As we have witnessed in many industries that have been deregulated - banking/finance, energy, airlines - Deregulation means that the consumer pays more.

Independent ISPs

Independent ISPs offer customers choice, flexibility and innovation. It is not the BOCs who have brought the internet to the masses but the independent ISP companies.

From a business perspective, the BOCs should want to continue to help the ISPs as well as the CLECs sell services; both are aiding the BOCs in their competition with cable. For each

January 6, 2005

Page 4

subscriber to cable, BOCs do not make money. From each ISP and CLEC subscriber, the BOCs do actually make money; and some would argue more profit.

Another point comes from a recent Forbes article, "Though there are alternatives for high-speed access such as telephone line-based DSL, fixed wireless and satellite, an estimated 60 percent of high-speed Internet users subscribe to their cable company's service, according to recent studies. That has been harmful to independent Internet providers who lost customers to cable and large telephone companies. Consumers Union, the publisher of Consumer Reports magazine, said three-fourths of all independent ISPs have gone out of business in the past five years." (<http://www.forbes.com/work/feeds/ap/2004/12/03/ap1690580.html>)

As the Consumers Union has stated, "The Consumer Federation of America and Consumers Union charged the decision will curtail the ability of facilities-based competitors to access the fiber necessary to provide advanced services and result in higher prices and slower innovation."

"The cause of the failure of high speed adoption is clear; Americans are being overcharged by the cozy duopoly of cable and telephone companies. Cross national comparisons of price show that Americans pay fifteen to ten times as much, on a megabit basis, as consumers in Japan pay. Three years ago the price in America was three or four times as high."

This proves no consumer gains.

What innovation?

Delivering a 3Mbps pipe to consumers? Cable companies were already offering it. What innovation have the BOCs offered? Filtering, managed router, anti-spam, anti-virus, etc. were brought to the market first by independent ISPs. Dial-up internet access and web hosting were the bread-and-butter of the independent ISP long before the BOCs entered into the arena. The BOCs like many monopolies are copycats not innovators.

Independent ISPs tailor solutions to each customer. ISPs cannot be cookie cutters; inventiveness and out-of-the-box thinking are required to combat the predatory pricing of the ISPs supplier and competitor, the ILEC. This is a direct benefit to each and every small business and consumer.

Independent ISPs offer training to teach consumers how to use the internet. Libraries, schools, rural areas and charities all benefit from the independent ISP, many of whom offer receive discounted or free access from them.

ISPs work with NASA, the DOD, open source projects, security concerns, and the like. These projects directly and indirectly benefit the consumer.

In the cell phone market, the innovation is coming from the CPE manufacturers (to sell more phones). It is not coming from the BOCs who own the network. The network to the BOCs is the pipe to the consumer to be controlled.

Most consumers want to know as much about the workings of telecom and the internet as they know about their car. If the consumer turns it on, it works – and does what it is supposed to do. Are the BOCs going to help bridge the digital divide? Most of the broadband penetration is in upper income areas. It will again be the independent ISP who brings affordable access to the information superhighway to anyone who wants it.

In today's age of always-on connections and Windows insecure operating systems, consumers are often overrun with malware, trojans, and virii. This influx of infected computers leads to harm for everyone connected to the internet through denial of service and spam attacks from

January 6, 2005

Page 5

these zombie machines. It is the independent ISP company that works with consumers to clean and prevent these maladies (spyware, virii, etc.).

Bobette Kyle said, "According to Digital Risk Specialists mi2g, SoBig alone was responsible for nearly 91% of the \$32.8 billion in economic damages caused by viruses and other system attacks." <http://www.websitemarketingplan.com/Arts/WormVirus.htm>

These incidents are growing. Cable and ILEC answer back with shutting off access to ports indiscriminately. This harms consumers. One day your Cisco VOIP phone works; the next day your cable company has closed port 62 and your phone cannot talk to the TFTP server, so it doesn't work.

This also leads to the question: If only the duopoly control access to the internet, won't they also control the content and what the consumer can use the broadband pipe for?

Section 10

- 1) "not unjustly and unreasonably indiscriminatory"
- 2) "protection of consumers"
- 3) "public interest"

I will grant that in the short-term, prices will come down, like cell phone usage has, until the market saturates, then prices will rise, if forbearance is granted.

As pointed out earlier, there are many examples of the BOCs showing unjust and unreasonable discriminatory practices towards its customers (the ISPs) to the detriment of the consumer. When the BOC fights over the consumer with an ISP (while not fixing the circuit), who is losing? The consumer. This happens very often.

To protect the consumer, the BOC must continue to regulate any broadband transport elements.

The BOCs have already demonstrated that the public interest is not their concern by the following actions:

- 1) fighting municipal broadband initiatives
- 2) political gamesmanship about deployment without deploying
- 3) litigating, petitioning, lobbying, and getting fined in place of deploying what was agreed upon
- 4) letting the US slip from the number one internet economy to number 10

Choice is always preferred. Wasn't AT&T broken up to give consumers choice in LD? How is choice in internet providers any different today?

Telecom is a natural monopoly. Even the President of AT&T knew that it needed to be regulated to protect the consumer.

"However, Theodore Vail, the President of American Telegraph & Telephone (AT&T), sought to avoid competition by establishing a new principle: that of a natural monopoly. He argued that it would be unwise to allow competition in the deployment of telephone networks, and permit a number of independent telephone systems to develop in the same city, each competing with each other: both for customers and for space to string their wires. The idea he proposed--that of a natural monopoly or public utility--was that there should be only one telephone company and

January 6, 2005

Page 6

that, since it would be a monopoly, it would be regulated by the government in order to protect the consumer." (<http://www.ims.ccsu.edu/Tele.htm>)

An additional item to point out is the cost to the BOCs of lobbying, litigating, and fines associated with discriminatory acts. I don't see those figures to counter balance the regulatory costs – or is the lobbying and litigating included as a regulatory cost?

The BOCs complain about the costs of regulation, but they chose to enter new markets like LD and Internet. Now they want the deal changed. So do I. I want enforced regulation of TA96 and Computer Inquiry I,II,&III.

"Deregulation should never be no regulation. Free markets are ever changing, and players are always devising new mischief. Government must remain vigilant of abuses and respond swiftly." Consumer Union

According to FCC-02-42A1, "Broadband deployment is the central communications policy objective in America." Then mandate that the BOCs and Cablecos deploy broadband by 3Q05 or face fines.

Municipalities understand that broadband access to information services is now a requirement to attract and keep businesses. Companies can no longer compete globally without broadband access. This directly impacts consumers as jobs are shifted overseas or to more technologically advanced areas of the country.

The duopoly has trudged along the digital divide, but has yet to fulfill its promises of bridging the chasm. Globalization of the economy shall continue. To compete effectively, the information superhighway needs to be available to everyone in America. The duopoly consists of publically traded companies that care more about stock options than helping American consumers compete.

If the Commission's take is that deregulation will result in more broadband deployment, please examine states that have had broadband deregulation like KY and SC to see if deregulation has improved the broadband deployment. I think you will find that it has not.

xDSL is a telecommunications service that must remain regulated. Qwest sells xDSL as a stand alone transport service – and as Naked DSL. This is telecom. This is a demonstration of what broadband is composed of:

- a transmission facility
- an application

Why would you forbear on this telecom service? It is not different than ISDN. The ILECs provide copper plant that is used for many services, but primarily voice services. Today, that plant is also used to offer a transmission facility to allow for high-speed data services. It is still copper plant. It is still a Common Carriage service.

Also, if forbearance is granted, what happens to state and county communications taxes, since the internet is not taxed? Tampa collects \$30 million in communications taxes. Without proper separation and Part 64 accounting, how would the states and counties collect the appropriate taxes? That will have a ripple effect on many communities tax structure – directly out of the consumers' pocket.

OSI Layer 1 facilities must remain regulated. The BOCs were recently granted forbearance on FTTC and FTTH. This has given the BOCs plenty of space to monopolize yet another sector of the industry.

January 6, 2005

Page 7

There will be a ripple affect with each forbearance ruling. Indeed each time the FCC makes a decision, consumers are affected – and lately not for the good as the choice for voice services has diminished, the price to consumers and businesses are increasing. The same will happen with broadband.

Examining the fines, the litigation, the lobbying, the politics – these have been the reasons that Americans pay more for broadband than even Canadians. Lack of competition and choice will not decrease the costs to the consumer.

Regards,

Peter Radizeski
RAD-INFO, Inc. – NSP Strategist
Telecom Consultant
813.963.5884